

12. A device according to Claim 6 comprising a pair of handles located on opposite sides thereof to facilitate use of said device.

13. A device according to Claim 8 comprising a pair of handles located on opposite sides thereof to facilitate use of said device.

REMARKS

Claims 1, 2, 6, 8, and 10 have been amended and claims 12 and 13 have been added. In its present form the application contains no multiple dependent claim which depends from another multiple dependent claim. Furthermore, all multiple dependent claims now refer to other claims in the alternative.

The claims have been amended to fully and clearly patentably distinguish the invention over all the prior art, particularly the reference to Everhart '387, and accordingly favorable reconsideration of the present application is hereby respectfully solicited.

As indicated in the specification and claims, the present invention is directed to a postcoital positioning pillow that will allow a female user to assume a position after sexual intercourse that will enhance the likelihood of becoming pregnant. It is an important aspect of the present invention that such a position may be achieved and maintained for a specific period of time without discomfort to the user. In order to accomplish this purpose, the present invention performs, simultaneously, two very important functions not taught or suggested in the prior art.

First, the invention provides means for maintaining the buttocks of a user in an elevated position. However, in addition to this, and most importantly, the invention also provides means cooperating with said buttock-elevating means for simultaneously maintaining the legs of a user in an upright elevated position.

The prior art, including Everhart '387, fails completely to teach or suggest this combination. There is no teaching or suggestion in the prior art of anything that will simultaneously support the legs in an upright elevated position while also elevating the buttocks of a user.

The thrust of the invention is to allow the user to assume the desired position and to maintain this position for a specified period of time in a comfortable manner. It is submitted that the prior art fails to teach or suggest this concept.

The reference to Everhart does not even remotely suggest that the legs of the user should be maintained in an upright position and fails completely to provide any means for accomplishing this. This is an important aspect of the invention and one that is nowhere suggested in the prior art.

The claims have been drawn to clearly reflect these important distinctions and to overcome all formal objections and they are accordingly deemed in condition for allowance.

The rejection of claims 2 and 9 as unpatentable over Everhart in view of *In re Aller*, 105 USPQ 233 is respectfully traversed. First of all, Everhart fails

completely to suggest or disclose the present invention for the reasons discussed above. Furthermore, it is submitted that Everhart teaches away from the present invention and suggests the opposite of what the present invention teaches. In the present invention it is considered critical that the legs be maintained in an upright vertical position while the buttocks are elevated. In Everhart, the opposite is taught. As will be apparent from Fig. 7 of Everhart, this reference teaches that the legs are not elevated and that the feet should be maintained touching the ground. This is the opposite of the present invention. Given this factor, one of ordinary skill in the art would have to go against the teachings of Everhart to form the device of Everhart with applicant's claimed dimensions. Thus, it is clear that the dimensions of claims 2 and 9 provide a new and unexpected result which is different in kind and not merely in degree from the results of the prior art in that these dimensions enable the invention to comfortably maintain the legs of a user in an upright position while simultaneously maintaining the buttocks elevated.

In view of this it is respectfully submitted that *In re Aller* operates to support the patentability of applicant's invention in view of the following statement of the Court:

"Under some circumstances, however, changes such as these may impart patentability to a process if the particular ranges claimed produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art."

Accordingly, entry of the present Amendment and allowance of the Application is hereby respectfully solicited.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Alfred Musumeci', with a horizontal line extending from the end of the signature.

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CERTIFICATE OF SERVICE

I hereby certify that the preceding Amendment responding to the Official Action dated August 16, 2004 in application Serial No. 10/775,696 was sent to the U.S. Patent and Trademark Office by facsimile transmission at fax phone number 703-872-9306 on September 22, 2004.



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